HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.2480 of 2005

17-08-2005

Between:

M/s. Etikoppaka Cooperative Agricultural &

Industrial Society Limited, Visakhapatnam.

…Petitioner.

And

The A.P. Transmission Company Limited,

Vidyuth Soudha, Hyderabad and others.

…Respondents.

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ORDER:

The writ petition is filed impugning the order in R.P.No.84 of 2003 in O.P.No.1075 of 2000 dated 20.3.2004 passed by the second respondent. Initially this Court passed an interim order in favour of the petitioner. On an application moved by the first respondent for vacating the stay, with the consent of the rival parties, the matter is being disposed of at the interlocutory stage.

In view of the order proposed detailed summation of the factual background, the rival

case of the respondents and elaborate submissions made by the Counsel may not be necessary. In a nutshell the admitted case is as follows. The petitioner is Independent Power Producer (IPP) having entered into a Power Purchase Agreement (PPA). Under the agreement, the entire electricity produced by the petitioner by non-conventional method/conventional method is purchased by the first respondent at an agreed tariff or the tariff as fixed by the second respondent in accordance with the provisions of the Electricity Act 2003 (hereafter called 'the Act'). Initially, when the issue of tariff was not decided by the second respondent the first respondent agreed to purchase the electricity from the petitioner at Rs.2.25 (base year 1994-'95), which is enhanced at the rate of 5% every year. Before the matter was taken up by second respondent, the petitioner was selling electricity at the rate of Rs.3.48 to the first respondent. In the year 2004, the second respondent initiated *suo motu* proceedings for determination of tariff applicable to non-conventional energy projects in A.P. to be effective from 01.4.2004. After an elaborate exercise; presumably – the second respondent passed general order on 20.3.2004 in R.P.No.84 of 2003 in O.P.No.1075 of 2000 fixing the tariff (fixed cost and variable cost) at Rs.2.74 for the IPPs using bagasse as fuel, at Rs.2.88 for the IPPs using biomass as fuel and at Rs.2.34 for mini hydel projects.

The petitioner which is an IPP commenced during 2000-01 had a remedy by way of filing an appeal before the Appellate Tribunal for Electricity constituted under Section 113(2) of the Act. Nonetheless, as such Tribunal was not constituted in 2004, the petitioner is being deprived of approaching the Appellate Tribunal. In a similar writ petition being W.P.No.13103 of 2004, this Court while admitting the writ petition passed the following order.

> Pending further orders, it is open to the Transmission Corporation to implement the revised Tariff. However, in addition to the rates payable under the revised Tariff, the petitioner shall also be paid 50 percent of the differential amount between the old and revised tariff for the actual power supplied by them with effect from today. The additional amounts so paid shall be subject to further orders in the writ petition.
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> It is also made clear that 50 percent of the differential amounts shall be worked out as per the rates applicable to the respective categories of non-conventional energy power projects.

When the matter was heard, learned counsel appearing for the first respondent as well as the Senior Central Government Standing Counsel brought to the notice of this Court that the third respondent by notification dated 07.4.2004 established the Appellate Tribunal for Electricity and that by other notifications (four of them) dated 18.5.2005 the Chairperson, Judicial member and two technical members were duly appointed for a period of three years from 13.5.2005 FN. Therefore they would urge that the writ petition is liable to be dismissed in view of availability of effective efficacious alternative remedy. The learned Central Government Standing Counsel also submits that within a period of three months, the appellate Tribunal would become fully functional and the matters can as well be decided by the said Tribunal. The learned Counsel does not seriously oppose the same.

Before the general order of the second respondent came to be passed, the petitioner commenced its production and supplied electricity to the first respondent. There was always a legitimate expectation that the tariff payable by the second respondent to IPP would be as was fixed when the production commenced. This Court considering this matter directed the second respondent therein to implement the revised tariff and also pay 50% of the differential amount between the old and revised tariff. The order of this Court is being worked to the benefit of IPP as well as the first respondent. Even if the petitioner approaches the learned appellate Tribunal for electricity and moves application to obtain appropriate interim order, it would certainly take some time. Therefore while relegating the petitioner to duly constituted statutory appellate Tribunal, it would be proper in equity to continue the same arrangement for a period of eight weeks. This is with a hope that the Central Government would do everything in its power to make the learned appellate Tribunal for electricity fully functional as expeditiously as possible preferably not later than a period of two months from today.

In view of the above, the petitioner is given liberty to approach the Appellate Tribunal for Electricity, New Delhi within a period of two weeks from today and move appropriate application for interim orders, if so advised. To enable the petitioner to obtain appropriate interim orders from the learned appellate Tribunal, the arrangement for payment of tariff as ordered by this Court on 20.8.2004 shall remain in force for a period of eight weeks from today or till the Tribunal passes orders on the interim application, whichever is earlier.

The writ petition, with the above observations and directions, is disposed of, without any order as to costs.

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(V.V.S.RAO,J)

17-08-2005.

NOTE:

Issue copy of the order

by 22.8.2005.

(B/o)

Msr.

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(Msr)